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C O N F I D E N T I A L SECTION 01 OF 07 BRUSSELS 000211

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[1](#)C. 2008 BRUSSELS 1880
[1](#)D. 2009 BRUSSELS 108
[1](#)E. 2009 BRUSSELS 276
[1](#)F. 2009 BRUSSELS 391
[1](#)G. 2009 BRUSSELS 622
[1](#)H. 2009 BRUSSELS 101
[1](#)I. 2009 BRUSSELS 1021
[1](#)J. 2009 BRUSSELS 616

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Classified By: USEU EconMinCouns Peter Chase for reasons
1.4 (b) and (d).

INTRODUCTION AND COMMENT

[1](#)1. (C) This cable describes political and procedural dynamics associated with the creation and maintenance of EU-wide sanctions programs. Effective USG influence over specific EU sanctions policies generally requires early, sustained, and strategic outreach to Member State capitals, Member State embassies in countries of concern and missions in Brussels, and the EU institutions. The EU uses its Common Foreign and Security Policy ("CFSP") procedures to implement as a regional bloc (1) sanctions imposed by the UN Security Council, (2) EU programs that go beyond Member States' obligations under the UN Charter, and (3) programs involving no UN obligations. Under CFSP rules, EU-level sanctions programs require the unanimous support of all 27 Member States. Cumbersome procedures, inadequate resources, incoherent organization, and legal, political, and economic considerations are leading to "sanctions fatigue." Nonetheless, the EU's Lisbon Treaty strengthens CFSP significantly, creating new opportunities for U.S. foreign policy. The final section of this cable outlines the categories of existing sanctions measures that fall within the CFSP framework.

[1](#)2. (C) COMMENT: The USG should take advantage of the unique

"post-Lisbon" transitional period to (1) stress that sanctions are an important tool of foreign policy, (2) encourage greater EU strategic planning, including by strengthening its implementation, enforcement, analytic, and intelligence-sharing capabilities, and (3) press the EU to create a sanctions unit within the nascent European diplomatic service. We should continue to share technical and political analysis of specific sanctions measures where we assess that EU action could reinforce priority U.S. foreign policy and national security interests. END COMMENT.

OVERALL SANCTIONS POLICY

13. (SBU) The European Union has long applied foreign policy- and security-based sanctions, reflecting the EU Member States' understanding that sanctions imposed collectively will be more effective. Sanctions measures are adopted by Member State foreign ministers under the EU's Common Foreign and Security Policy ("CFSP"), where decisions are taken by consensus. Applying such tools is a politically sensitive issue in all Member States. The need for unanimity makes it relatively difficult for the EU to enact sanctions measures unless they have already been enacted by the UN. But the EU does autonomously adopt sanctions that go beyond UN requirements. And in some cases it will act absent UN measures.

14. (C) The EU and United States generally have common strategic objectives where sanctions have been imposed. Shared sanctions measures, even when largely symbolic, demonstrate transatlantic political unity. Similarly, as the world's largest economy, the EU remains the most important

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U.S. counterpart in terms of economic sanctions implementation. Joint U.S.-EU targeted financial sanctions are particularly powerful, since blocking access to the dollar, euro, pound, and other European currencies greatly limits targets' access to the world's formal financial and trade system. The euro's increasing role as a reserve currency represents both a potential weakness and a crucial leverage point for U.S. economic sanctions programs in the future.

DECISION-MAKING: LEGAL AND POLITICAL PROCESS

15. (SBU) Like the United States, the EU prefers a multilateral approach to sanctions, ideally under international legal obligations and political cover of UN Security Council resolutions. Failing UN sanctions on important cases, Member States pursue unified EU measures instead of independent action along national lines. EU-wide sanctions programs are usually initiated through a two-stage process: establishing a common policy, and implementing through Commission or other mechanisms.

16. (SBU) First, to set sanctions policy, Member States must reach unanimous agreement. Depending on the case, the consensus-making process can be simultaneously "top-down" and "bottom-up," with great interplay among Ambassadors in the country of concern, technical experts, and political leaders. Council working groups responsible for the relevant geographical or functional issues are crucial venues in which negotiation and compromise occur. (NOTE: Once consensus is reached within these groups, a window effectively closes on USG influence over EU policy. However, many EU sanctions programs must be renewed every six to twelve months. The USG can therefore also influence modifications to those programs during the renewal process, which mirrors the initial decision process. END NOTE.) In rare cases where agreement is stalled at the working group level, Political and Security Committee ("PSC") Ambassadors may continue discussions.

Council Secretariat permanent staff produce draft policy documents using guidance from the appropriate working groups.

Their drafts are given to the External Relations ("RELEX") Counselors working group, which examines legal and technical issues associated with implementing sanctions programs. RELEX finalizes the legal texts and transmits documents for formal, usually pro forma, approval in the Committee of Permanent Representatives ("COREPER II Ambassadors") and adoption at subsequent EU Council of Ministers meetings. The end results are "Council Decisions" (FKA Common Positions) laying out the broad scope of measures to be taken toward shared foreign policy objectives. Individual Member States must pass national legislation or otherwise implement those measures for which they retain exclusive competence (e.g., travel bans and arms embargoes).

17. (SBU) Second, on the basis of mandates taken from Council Decisions, the Commission must propose for Council approval (after seeking the non-binding opinion of the European Parliament) Regulations prescribing in detail those sanctions implementing measures of EU-level competence. Implementing Regulations most often involve trade or financial restrictions, such as asset freezes. Regulations are directly applicable law across the European Union. They enter into force upon publication in the EU's Official Journal.

18. (SBU) Political will for autonomous sanctions can be inversely related to European economic interests. Action has been swiftest and strongest in areas, such as Guinea, where EU economic sacrifices were relatively insignificant. In contrast, Member State economic interests have prevailed over their political statements in key strategic contexts, such as Iran; collectively, the EU remains Iran's single largest trading partner. As a general rule, EU sanctions are

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designed to target as closely as possible the individuals and entities responsible for undesirable policies and actions. This is partly a moral and legal question of proportionality and partly a practical consideration for a 27-member common market built on free movement of capital and trade liberalization. The EU strongly resists economic sanctions against sovereign States per se, but is willing to designate individual regime members or parastatal enterprises where appropriate.

19. (C//NF) Although some Member States are either hawkish (e.g., UK and France) or largely indifferent toward sanctions issues, USEU encounters a general skepticism about the efficacy and utility of sanctions among the majority of its EU interlocutors. Various factors fuel this skepticism. The Commission is primarily designed to deploy the power of attraction (the proverbial carrot) in the EU's regional expansion and engagement with other third countries. Rather than responding to problematic situations by restricting participation in community life, the EU often prefers to offer explicit incentives in exchange for desired behavioral change. EU "sanctions fatigue" also stems from fears of lost economic opportunities, a litany of legal challenges to targeted sanctions in European courts, objections that sanctions are applied subjectively and inconsistently against certain countries, and the associated encumbrances for over-burdened bureaucracies. Nonetheless, the EU is capable of taking consequential action in pursuit of its interests. European leaders are also sensitive to public opinion on major foreign policy issues and to the political and diplomatic symbolism of sanctions measures.

110. (C) The EU faces challenges to sanctions by terrorist or other targets in courts, as well as lobbying or public pressure by some business interests, academics, human rights advocates, politicians, and civil servants. Negative publicity campaigns, particularly those criticizing the human rights implications of intelligence-driven targeted measures, have undermined support for sanctions implementation and

raised political costs for proponents in key EU decision-making bodies. The most comprehensive example is probably the public and legal campaign by the MeK, which successfully reversed their sanctions designation (REF H).

¶11. (C) EU courts and the European Parliament have heavily scrutinized Commission and Member State implementation of individualized/targeted sanctions, incrementally setting legal and practical limits to EU sanctions policy. Legal cases in European courts, usually waged on due process grounds, have overturned several EU sanctions designations and required major reforms of internal implementation procedures. Evolving European jurisprudence has established the importance of time limits to EU sanctions. Autonomous programs must be reviewed, generally every six to twelve months, in order to be renewed. A review is also the occasion for the EU to assess the political relevance of a program, including the appropriateness of each of its specific components and individual targets. Working-level officials, often through informal outreach to U.S. counterparts, have attempted to mitigate the spillover implications that European jurisprudence could have for UN or other multilateral sanctions regimes.

¶12. (C) Indeed, through irrevocable court decisions, the EU risks losing the ability to implement targeted sanctions as a foreign policy tool. The combined "Kadi" and "Al-Barakaat" case, which should complete its journey through the European Court of Justice in 2010, could even strike down the EU's ability to implement targeted UN counterterrorism sanctions on due process grounds (SEPTEL). Individual EU and other countries could use such an outcome to justify their own non-compliance with the UN's Al-Qaeda and Taliban sanctions regime. European leaders and opinion makers do not yet seem to be fully aware of the potential implications of a restricted "toolkit" for EU foreign policy.

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U.S. INFLUENCE ON EU SANCTIONS POLICY

¶13. (C//NF) Effective USG influence over EU sanctions policies generally requires sustained, multi-dimensional outreach. First and foremost, U.S. diplomats in target countries (e.g., Burma and Zimbabwe) should engage their EU counterparts, who are fundamental to EU listing and de-listing decisions. Parallel outreach is also necessary in Member State capitals, in particular former colonial powers or governments with special relationships to target countries (usually the same as those with embassies in the field). USG produced technical non-papers have proven to persuade EU analysis over the long term and influence program modifications during renewal decisions. Some other avenues for USG outreach have included: UN Security Council sanctions committees; information/intelligence sharing on a bilateral or EU-wide basis; weekly State (EUR/ERA) phone calls with the rotating EU Presidency; monthly demarches to the EU's Foreign Affairs Council (FKA the GAERC); ad hoc demarches; U.S.-EU political dialogues (FKA troikas); U.S.-EU Summits; technical and legal discussions or workshops with EU institutions; and indirect influence through like-minded NGOs. Each priority U.S. sanctions program should be synched with the respective (e.g., Africa, Asia, Middle East, Iran, United Nations, Eastern Europe, Latin America, Non-proliferation, and Terrorist Financing) U.S.-EU "troika" political dialogue during each EU Presidency.

¶14. (C) USEU strives to ensure that U.S. and EU sanctions measures broadly correspond whenever possible. Common transatlantic sanctions policies reduce the potential for trade disputes and facilitate political unity toward third countries or in multilateral venues. Some U.S. and EU programs appropriate help incentives for these states or their superiors to take proactive initiative beyond their

formal mandates within the EU's intensely legalistic and process-oriented structures. As a result, the EU institutions do not engage in formal or informal outreach to quantify Member State implementation and EU sanctions programs are implemented directly by EU institutions. Member States use the CFSP process to harmonize policy on key international security issues, but must act upon most aspects of their decisions at the national level. By extension, personnel in Member State capitals (e.g., intelligence services, foreign and finance ministries) and Brussels-based Permanent Representations are leveraged in all CFSP sanctions programs.

All Perm Reps include staffers who engage within functional and regional EU Council working groups across the full

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spectrum of CFSP programs. Capitals-based officials often travel to Brussels to participate in sanctions-related meetings at various stages of the decision-making process. In addition to their administrative responsibilities, Commission and Council Secretariat staffers help coordinate discussion and consensus among Member States.

LISBON TREATY OUTLOOK

¶17. (C//NF) While it is too soon to determine the impact of the Lisbon Treaty on EU sanctions programs, Lisbon will consolidate certain Commission and Council Secretariat responsibilities. Our contacts expect the two rival institutions to work more closely on sanctions issues. A future EU diplomatic corps, the European External Action Service ("EEAS"), should theoretically centralize points of contact, creating a "single EU phone number" on many key foreign policy issues, specific sanctions policies included. The EU's Joint Situation Center ("SitCen"), an analytical unit that has historically been staffed by seconded analysts from Member State intelligence services, will support the EEAS. SitCen has helped the EU develop policy, including terrorism finance and sanctions policy, by forging consolidated, EU-wide analyses and "getting the non-UNSC member states caught up" so they "can't say they don't understand," as its Director told us (REF I, PARA 26). Our contacts expect SitCen to grow significantly in size and prestige thanks to its association with the EEAS; some have indicated their intention to leave national services in favor of permanent positions there.

EU SANCTIONS MEASURES, BY TYPE

¶18. (U) Active EU sanctions measures falling under the Common and Foreign Security Policy ("CFSP") framework are listed below by type. Member States use the CFSP framework to implement measures taken by the UN Security Council under Chapter VII of the UN Charter, along with "autonomous" EU measures involving no Chapter VII obligations. CFSP sanctions cannot be imposed against individuals or entities where there is no foreign policy dimension. This list does not include EU restrictive measures (e.g. safety-related flight bans, export controls on dual-use items) agreed and administered through other procedures. Updated information on CFSP programs is currently available at http://ec.europa.eu/external_relations/cfsp/sanctions/docs/measures_en.pdf.

Counterterrorism Sanctions

¶19. (C) Targeted counterterrorism measures are the only CFSP sanctions that are primarily functional in scope; all other CFSP programs are designed along regional lines. The EU uses the CFSP framework to apply UN (Al-Qaeda and Taliban/UNSCR 1267) counterterrorism measures, which include an arms embargo, travel ban, asset freeze, and prohibition on economic transactions with listed parties. Beyond this,

Member States have made a political decision in support of applying autonomous EU counterterrorism (UNSCR 1373) measures to designated groups and individuals. However, Member States currently refuse to include on their autonomous list anyone who could potentially be designated by the UN under UNSCR 1267 authorities (REF J, PARAS 5-7). Autonomous EU (UNSCR 1373) restrictions include an asset freeze and prohibition on economic transactions, with exemptions for humanitarian purposes. Member States have also committed to affording each other police and judicial cooperation in cases involving these autonomous authorities.

Travel Ban/Diplomatic Isolation

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¶20. (U) EU sanctions frequently target political elites, leaders of rebel groups, or other individuals associated with country-specific activities of concern. Diplomatic isolation could potentially take a variety of forms (e.g. reducing cultural exchanges or diplomatic representation), but CFSP-based measures generally include travel bans against listed individuals. In the case of Burma, the EU has also agreed to suspend all high-level bilateral engagement, with limited exceptions, and banned the attachment of military personnel to Burmese diplomatic representations in EU Member States. Travel bans currently apply to regime members, rebel leaders, or other problematic figures linked to the Balkans, Burma, Cote d'Ivoire, Democratic Republic of the Congo ("DRC"), Guinea, Iran, Iraq, Lebanon/Syria (pending UNSCR 1636-related designations concerning the Rafiq Hariri assassination), Moldova (Transnistria-related), North Korea, Sierra Leone, Somalia (pending UNSCR 1844-related designations), Sudan, and Zimbabwe.

Arms Embargo/Suspension of Military Cooperation

¶21. (U) CFSP-based arms embargoes generally consist of (1) a prohibition on the sale, supply, or transfer of arms and related materials of all types, military vehicles and equipment, and spare parts; and (2) a prohibition on the provision of financing, technical assistance, or other services related to military activities. Embargoed goods include, at a minimum, the items found in the EU's "Common Military List." Exemptions can apply for (1) UN, EU, or other governmental peacekeeping or capacity-building operations; and (2) for protective gear used by humanitarian, development, or media representatives. EU arms embargoes currently apply to Burma, Cote d'Ivoire, China, DRC, Guinea, Iran, Iraq, Lebanon, North Korea, Sierra Leone, Somalia, Sudan, and Zimbabwe.

Trade Restrictions

¶22. (SBU) Despite its preference for targeted sanctions, the EU has imposed sectoral trade restrictions in several contexts. Trade restrictions have primarily involved natural resources whose exploitation has fueled violent conflict or sustained undemocratic political regimes. The EU generally undertakes them under UN obligations or in concert with like-minded countries. There are currently prohibitions on imports of certain diamonds (Cote d'Ivoire), cultural artifacts (Iraq), and timber/metal ores/semi-precious stones (Burma). The EU also bans the export of listed luxury goods (North Korea) and the provision of certain export credits (North Korea, Iran, and Burma).

Asset Freeze/Prohibition against Economic Transactions

¶23. (U) Targeted EU financial measures generally entail (1) a freeze of assets held by listed individuals and entities within EU jurisdiction; and (2) a prohibition on economic relationships with affected parties (with exemptions for humanitarian purposes). These frequently, but not always, accompany EU travel bans against sanctioned individuals. Targeted financial measures remain in force against

individuals, groups, and entities (including parastatal enterprises) with links to the Balkans, Burma, Cote d'Ivoire, DRC, Guinea, Iran, Iraq, Lebanon/Syria (similarly depending on investigation of the Hariri assassination), North Korea, Somalia (similarly pending UNSCR 1844 designations), Sudan, and Zimbabwe.

"Enhanced Vigilance" for the Financial Sector

¶24. (U) Enhanced vigilance for the financial sector is a relatively recent innovation in the EU sanctions domain. Credit and financial institutions under EU and Member State jurisdiction are expected to incorporate a robust set of anti-money laundering controls to help stem Iranian and North Korean proliferation-related activities. These controls

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implement non-binding components of UNSCRs 1803 and 1874 and reflect guidance issued by the Financial Action Task Force ("FATF"). They include continuous vigilance/enhanced customer due diligence; requirements for complete payment instructions in all wire transfers; maintenance of transaction records for five years; and suspicious transaction reporting to Member State financial intelligence units.

Cargo Inspections

¶25. (U) Cargo inspections in the aviation and maritime sectors also constitute a new approach to CFSP sanctions policy. These inspections are also limited to the Iran and North Korea contexts and similarly implement non-binding UNSCR provisions. The EU requires relevant aircraft and vessels to submit pre-departure/pre-arrival information to Member State customs authorities for all goods brought out of/into the EU. Those aircraft and vessels must also declare whether they are shipping goods covered by associated EU sanctions and, if so, specify all particulars of the relevant export license. The EU/DPRK program prohibits bunkering, supply, or other services to vessels that are reasonably suspected of carrying sanctioned goods.

Reduction of Technical Cooperation

¶26. (U) Several CFSP programs reduce or eliminate EU technical cooperation with countries of concern. A ban on training in disciplines related to nuclear technology currently applies to nationals of Iran and North Korea. EU sanctions against Burma prohibit direct participation in certain non-humanitarian aid and development projects. Suspension of EU-wide aid monies, however, is a Commission competence. Despite its aversion to economic sanctions against sovereigns, the EU currently restricts provision of loans/financial assistance (e.g., through international financial institutions) to the Governments of Iran and North Korea.

Protections against Extra-Territorial Applications of Law

¶27. (SBU) Contacts occasionally remind us that the EU maintains a standing legal framework that allows for retaliatory sanctions against the United States. The program, adopted in response to the Iran & Libya Sanctions and Helms-Burton Acts of 1996, requires Member States to protect themselves against the extra-territorial application of third country legislation in violation of international law. In practice, Member State and EU institutional interlocutors more frequently threaten World Trade Organization dispute resolution when they are unhappy about the potential impact of U.S. economic sanctions on EU companies.

KENNARD